

RECORDATION NO. 27381 FILED

FEB 15 '08 -1 15 PM

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
1050 SEVENTEENTH STREET, N.W.

SUITE 301  
WASHINGTON, D.C.

20036

(202) 393-2266

FAX (202) 393-2156

E-MAIL [alvordlaw@aol.com](mailto:alvordlaw@aol.com)

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

OF COUNSEL  
URBAN A. LESTER

SURFACE TRANSPORTATION BOARD

February 15, 2008

Anne K. Quinlan, Esquire  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

Dear Ms. Quinlan:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Memorandum of Mortgage, dated as of February 15, 2008, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Debtor: Babcock & Brown Rail Funding LLC  
885 Second Avenue  
49<sup>th</sup> Floor  
New York, NY 10017

[Secured Party: Bayerische Hypo-Und Vereinsbank AG, Agent  
FPA 4 Lease/Asset Finance  
Am Tucherpark 1 (FPA)  
80538 Munich  
Germany]

Anne K. Quinlan, Esquire  
February 15, 2008  
Page 2

A description of the railroad equipment covered by the enclosed document is:

110 railcars: BNBX 500141 - BNBX 500250.

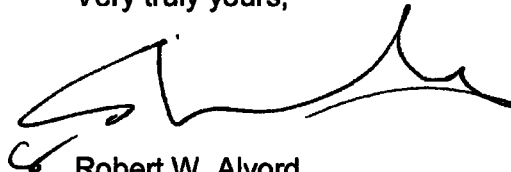
A short summary of the document to appear in the index is:

Memorandum of Mortgage.

Also enclosed is a check in the amount of \$35.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in dark ink, appearing to be "R. W. Alvord", written in a cursive style.

Robert W. Alvord

RWA/sem  
Enclosures

RECORDATION NO. 27381 FILED

FEB 15 '08 -1 15 PM

SURFACE TRANSPORTATION BOARD

**MEMORANDUM OF MORTGAGE**

Memorandum of Mortgage, made and entered into as of February 15, 2008 between **BABCOCK & BROWN RAIL FUNDING LLC** (the "Debtor") and **BAYERISCHE HYPO-UND VEREINSBANK AG**, as Agent under the Security Agreement referred to below (together with its successors and permitted assigns, the "Secured Party"). Terms used in this instrument have the meanings assigned thereto in the Second Amended and Restated Security Agreement dated as of September 21, 2007 (as supplemented, including by Security Agreement Supplement No. 71 dated the date hereof, the "Security Agreement") between the Secured Party and the Debtor.

**WITNESSETH:**

The undersigned and the Secured Party have entered into the Security Agreement, by which the Debtor has granted a security interest in certain railroad equipment bearing reporting marks and road numbers as listed on Exhibit A attached hereto and in each document referred to on Exhibit B attached hereto to the Secured Party in order to secure the Debtor's performance of its obligations as described in the Security Agreement.

IN WITNESS WHEREOF, the party hereto has caused this memorandum to be duly executed by its officer duly authorized as of the date and year first above written.

**BABCOCK & BROWN RAIL FUNDING  
LLC**

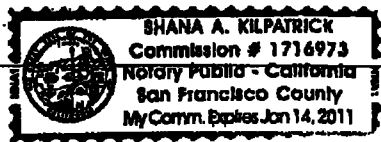
By   
Name: Ross Sullivan  
Title: Vice President

STATE OF CALIFORNIA        )  
                                      ) ss.:  
COUNTY OF SAN FRANCISCO )

On February 13, 2008, before me, Shana Kilpatrick, Notary Public, personally appeared Ross Sullivan, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Shana Kilpatrick  
Notary Public

**Exhibit A**  
**to Memorandum of Mortgage**

**EQUIPMENT**

<u>Lessee</u>	<u># Cars</u>	<u>Year Built</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
Marquis Energy LLC	110	2008	American Railcar Industries, Inc.	T108	100-ton, 30,000 gallon, non-coiled, non-insulated, stub sill sloped bottom tank cars	BNBX 500141 – 500250, inclusive	None

Together with all substitutions, replacements and renewals of the property above described, and all property which shall hereafter become physically attached to or incorporated in the property above described, whether the Debtor now has rights therein or such rights shall hereafter be acquired by it.

***Exhibit B***  
***to Memorandum of Mortgage***

**LIST OF LEASES AND OTHER OPERATIVE AGREEMENTS**

Railcar Manufacturing and Purchase Agreement dated as of June 26, 2007, by and between American Railcar Industries, Inc. and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described in Exhibit A hereto.

Master Full Service Railcar Lease dated as of February 8, 2008, between Babcock & Brown Rail Funding LLC and Marquis Energy LLC, to the extent the same relates to the Equipment described in Exhibit A hereto.

Schedule No. 01 to Master Full Service Railcar Lease dated as of February 8, 2008, between Babcock & Brown Rail Funding LLC and Marquis Energy LLC, to the extent the same relates to the Equipment described in Exhibit A hereto.

Warranty Bill of Sale dated as of February 15, 2008 from American Railcar Industries, Inc. to Babcock & Brown Rail Funding LLC and Certificates of Acceptance executed by Babcock & Brown Rail Funding LLC in relation to the railcars identified in such Warranty Bill of Sale.

Together with all substitutions, replacements and renewals of the property above described, whether the Debtor now has rights therein or such rights shall hereafter be acquired by it.

**CERTIFICATION**

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: 2/15/08



\_\_\_\_\_  
Robert W. Alvord